

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

DEVON MONTGOMERY,

Plaintiff,

v.

GARFIELD COUNTY JAIL, et. al.,

Defendants.

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Case No. CIV-13-1312-D

REPORT AND RECOMMENDATION

Plaintiff, a prisoner appearing *pro se*, has filed this action under 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Pursuant to an order entered by United States District Judge Timothy D. DeGiusti, this matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C § 636(b)(1)(B). On January 22, 2014, the undersigned entered an order granting Plaintiff's Motion to Proceed *In Forma Pauperis*, ECF No. 7, but ordered Plaintiff to pay an initial partial filing fee of \$20.70. Plaintiff was advised that he could voluntarily dismiss this action in accordance with Fed. R. Civ. P. 41(a) on or before February 13, 2014, without incurring any fees or costs. Plaintiff was further cautioned that the undersigned would recommend that the action be dismissed without prejudice if Plaintiff failed to comply with his obligation to make the initial partial payment.

Plaintiff was granted two (2) extensions of time to make the initial partial payment. *See* ECF Nos. 10 and 12. The extended deadline of May 21, 2014 has now passed. As of this date, Plaintiff has failed to pay the initial partial filing fee as required. Thus, the action is subject to dismissal without prejudice to re-filing. Local Civil Rule 3.4(a); *See Cosby v. Meadors*, 351 F.3d 1324, 1326-33 (10th Cir. 2003) (upholding dismissal of civil rights complaint based on noncompliance with orders requiring installments on the filing fee or to show cause for the failure to pay). *See also Kennedy v. Reid*, No. 06-1075, 208 Fed. Appx. 678 (10th Cir. Dec. 13, 2006) (finding no abuse of discretion in district court's dismissal without prejudice of section 1983 action due to litigant's failure to timely pay initial filing fee); *Campanella v. Utah County Jail*, Nos. 02-4183, 02-4215, 02-4235, 78 Fed. Appx. 72, 73 (10th Cir. Oct. 10, 2003) (same). Moreover, under Fed.R. Civ.P. 41(b) a district court may dismiss an action because the plaintiff fails to comply with a court order requiring partial payments. *Cosby*, 351 F.3d at 1327.

RECOMMENDATION

In light of the forgoing, the undersigned hereby recommends that this action be **DISMISSED** without prejudice for Plaintiff's failure to pay the initial partial filing fee as ordered by the Court. Plaintiff is advised that any objections to this Report and Recommendation must be filed with the Clerk of this Court on or before **June 30, 2014** in accordance with 28 U.S.C § 636 and Federal Rule of Civil Procedure 72. Failure to make timely objection to this Report and Recommendation waives the right

to appellate review of both the factual findings and the legal issues decided herein.

Casanova v. Ulibarri, 595 F.3d 1120, 1123 (10th Cir. 2010).

This Report and Recommendation **disposes of all issues** referred to the Magistrate Judge in the captioned matter.

ENTERED on June 13, 2014.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE